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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

———————

Ex parte DAVID N. HARRIS

———————

Appeal 2010-004625
Application 09/617,361
Technology Center 3600

———————

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

———————

STATEMENT OF THE CASE[2]

David N. Harris (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a non-final rejection of claims 60-118, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of verifying an electronic purchase (Specification 1:6-8).

An understanding of the invention can be derived from a reading of exemplary claim 60, which is reproduced below [bracketed matter and some paragraphing added].

> 60. A computer system for verifying a commercial transaction between a user with credit card data and a merchant, said computer system comprising:
> [1] a processing unit for processing data and code; and
> [2] memory for storing said data and said code, said data and said code including
> [3] a merchant communications module
> > operative to facilitate a connection with said merchant
> > > for receiving a transaction approval request,
> [4] an account-holder communications module
> > operative to facilitate a separate connection with an
> > account-holder associated with said credit card data

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[2] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 5, 2008) and Reply Brief ("Reply Br.," filed December 7, 2009), and the Examiner's Answer ("Ans.," mailed October 5, 2009).

1   for said account-holder to verify said transaction

2   approval request, and

3   [5] an authorization module

4   responsive to a verification indicator

5   switchable by said account holder between at least

6   a first state and a second state,

7   said first state enabling a previously

8   established verification requirement and

9   said second state disabling said previously

10   established verification requirement,

11   said authorization module being operative to cooperate

12   with said account-holder communication module

13   for obtaining account-holder verification of said

14   transaction approval request

15   in response to said verification indicator being in

16   said first state;

17   said authorization module being further operative to

18   automatically verify said transaction approval request

19   without obtaining verification from said account

20   holder

21   in response to said verification indicator being in

22   said second state,

23   said authorization module being

24   responsive to receipt of said transaction approval

25   request and

26   operative to transmit an approval to said merchant

27   if said transaction approval request is

28   verified.

29   The Examiner relies upon the following prior art:

| Blonder | US 5,708,422 | Jan. 13, 1998 |
| Joao | US 6,529,725 B1 | Mar. 4, 2003 |

1   Claims 60-65, 72, 74-80, 87, 89-95, 102, and 104-118 stand rejected

2   under 35 U.S.C. § 102(b) as anticipated by Blonder.

3   Claims 66 and 81 stand rejected under 35 U.S.C. § 103(a) as

4   unpatentable over Blonder.

5   Claims 67-71, 73, 82-86, 88, 96-101, and 103 stand rejected under 35

6   U.S.C. § 103(a) as unpatentable over Blonder and Joao.

7   ISSUES

8   The issues of anticipation and obviousness turn primarily on whether

9   Blonder describes a switchable verification indicator, and the degree to

10   which the claims are as narrowly recited as the Appellant argues.

11   FACTS PERTINENT TO THE ISSUES

12   The following enumerated Findings of Fact (FF) are believed to be

13   supported by a preponderance of the evidence.

14   *Facts Related to the Prior Art*

15   *Blonder*

16   01.   Blonder is directed to a way of authorizing a transaction in

17   which the customer is informed of a pending authorization, and

18   the transaction is then authorized only in response to a customer

19   confirmation. Blonder allows a principal to be automatically

20   alerted to, and/or to promptly authorize, an agent-initiated

21   transaction which may, for example, be deemed atypical based on

22   a pre-stored profile specified by the principal. Blonder 2:43-60.

1   02.   Blonder describes its Figure 3, an illustrative table that

2   associates alerting and approval threshold parameters to credit

3   card numbers. Each record in the table of Figure 3 is a profile for a

4   credit card number that is used to determine the manner in which

5   transactions charged to that credit card number are processed. The

6   alert flag field indicates that the card owner is to be notified, for

7   example, when processing of the transaction would either cause

8   certain conditions pre-defined for the use of the card to be

9   breached, or a threshold parameter to be exceeded. The approval

10   flag field alerts the card issuer that credit card transactions that

11   violate pre-established conditions need to be authorized by the

12   card owner as part of the card validation process. These pre-

13   established conditions may be pre-selected by the card owner.

14   The conditions field shows restrictions pre-selected by the card

15   owners for use of their credit cards. When an approval flag is set

16   to "no" then a permissible maximum transaction can take place

17   without obtaining answer or verification from the account holder,

18   disabling notification to the card holder. Setting the Approval flag

19   to "yes" the system initiates communication with the cardholder to

20   determine if amount above a certain threshold can be authorized.

21   Blonder 5:48 – 6:10.

22   03.   Blonder describes having Blonder's system contact the account-

23   holder rather than the account-holder contacting Blonder's system

24   during transaction authorization. Blonder 7:65 – 9:30.

25   04.   When a merchant requests verification from a card issuer, the

26   card issuer may call the customer possessing the card for

1   verification. When the customer provides the verification to the

2   card issuer, effectively approving the transaction, the card issuer

3   in turn provides verification to the merchant. Blonder 5:25-47.

4   *Joao*

5   05.   Joao is directed to providing financial transaction authorization,

6   notification and/or security, in conjunction with credit card,

7   charge card, debit card, and/or currency or "smart" card use,

8   savings and/or checking account activity and use and/or cellular

9   telephone use. Joao $3:66 - 4:7$.

10 06.   In instances when the communication device does not have a

11 reply or two-way pager feature, the cardholder may simply

12 telephone the central processing office or a processing center for

13 the card in order to personally appraise the center or office of his

14 or her response to the central processing computer transmission

15 regarding the transaction. Joao 19:1-7.

16 ANALYSIS

17 *Claims 60-65, 72, 74-80, 87, 89-95, 102, and 104-118 rejected under 35*

18 *U.S.C. § 102(b) as anticipated by Blonder.*

19 We are unpersuaded by the Appellant's argument as to claims 60 and 75

20 that Blonder fails to describe "a verification indicator switchable by said

21 account holder between at least a first state and a second state, said first state

22 enabling a . . . verification requirement, said second state disabling said . . .

23 verification requirement." Appeal Br. 42.

1   The Examiner found such a verification indicator in Blonder Fig. 3.

2   Answer 5. We agree that Blonder describes this. FF 02. The Appellant

3   contends that Blonder's Fig. 3 fails to describe receiving its data from an

4   account holder to enable or disable. Appeal Br. 44.

5   We find the description of Fig. 3 states that the account holder selects

6   both the approval flags and conditions fields' contents. FF 02.   Whether

7   Blonder explicitly recites how this is done is irrelevant as the claims at issue

8   to not recite either the timing or manner of such selection. It is sufficient

9   that Blonder explicitly recites the capacity of the account holder to set those

10   fields.

11   We are persuaded by the Appellant's argument as to claims 105 and 107;

12   that Blonder fails to describe an interactive verification module operative to

13   wait for said account-holder to initiate said connection with said account-

14   holder communication module, any prior notification to said account-holder

15   regarding said transaction being disabled. Appeal Br. 45 and 47.

16   The Examiner found such a verification indicator in Blonder 7:65 – 9:30.

17   Answer 4. We agree that Blonder fails to describe this. FF 03. The

18   Examiner found that Blonder's authorization module initiated the

19   connection. Answer 4. As the Appellant contends, this is not what is

20   claimed. Claim 108 depends from claim 107.

21   We are unpersuaded by the Appellant's argument as to claim 106 that

22   Blonder fails to describe "a financier communication module operative to

23   facilitate a connection with a financier for receiving a verification request

24   related to said commercial transaction" and "an account-holder

1   communications module . . . operative to transmit an approval to said

2   financier if said commercial transaction is verified." Appeal Br. 46.

3   The Examiner found this in Blonder. Answer 5. We agree that Blonder

4   describes this. FF 04. The Appellant contends that Blonder requires, in

5   addition to the card owner, that a third-party approve the transaction and,

6   towards that end, that a request for verification be sent to the third-party, and

7   that there is no teaching of the financier submitting a verification request to a

8   third-party verification system much less teaching the transmission of an

9   approval from the third-party verification system to the financier if the

10   commercial transaction is verified. Appeal Br. 46.

11   This argument is simply not commensurate with the scope of the claim.

12   The claim makes no further limitation on the manner or content of the

13   communication. To the extent the Appellant is arguing a distinction

14   between Blonder's database repository and a financier, Blonder's credit card

15   database clearly stands in place as a tool for the financier, and so

16   communications with the database are in effect communications with the

17   financier.

18   We are unpersuaded by the Appellant's argument as to claims 109, 117,

19   and 118. Appeal Br. 48-49. The Appellant repeats arguments from claims

20   60, 75 and 106, and those arguments are equally unpersuasive here.

21   *Claims 66 and 81 rejected under 35 U.S.C. § 103(a) as unpatentable over*

22   *Blonder.*

23   We are unpersuaded by the Appellant's argument that Blonder fails to

24   describe an authentication code from the account-holder "prior to said step

25   of reciting at least a portion of said transaction approval request to said

account holder." Appeal Br. 50; Reply Br. 20-21. The Examiner took notice of the notoriety of such authentication codes as PIN's (Personal Identification Numbers) used to authenticate users prior to transactions. We agree that the use of authentication techniques were highly prevalent to prevent fraud and in particular the use of codes for such authentication was widely used by those of ordinary skill. The Appellant has not challenged this notoriety, but only its presence in Blonder. This rejection is under obviousness rather than anticipation.

Claims 67-71, 73, 82-86, 88, 96-101, and 103 rejected under 35 U.S.C.
§ 103(a) as unpatentable over Blonder and Joao.

We are unpersuaded by the Appellant's argument that Joao fails to describe waiting for the account-holder to initiate communication. Reply Br. 21-22. The Examiner found that Joao described having an account holder initiate the communication is certain instances where it was foreseeable that the account holder would need to without waiting to be contacted first. Answer 6.

We agree that Joao describes such an alternative where the account-holder initiates the communication. FF 06. The Appellant contends the account holder is contacted first in these instances, but we find no evidence to support this in Joao. Instead, the account holder calls on his own to appraise the card provider.

CONCLUSIONS OF LAW

The rejection of claims 60-65, 72, 74-80, 87, 89-95, 102, 106, and 109-118 under 35 U.S.C. § 102(b) as anticipated by Blonder is proper.

The rejection of claims 105, 107, and 108 under 35 U.S.C. § 102(b) as anticipated by Blonder is improper.

The rejection of claims 66 and 81 under 35 U.S.C. § 103(a) as unpatentable over Blonder is proper.

The rejection of claims 67-71, 73, 82-86, 88, 96-101, and 103 under 35 U.S.C. § 103(a) as unpatentable over Blonder and Joao is proper.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 60-65, 72, 74-80, 87, 89-95, 102, 106, and 109-118 under 35 U.S.C. § 102(b) as anticipated by Blonder is sustained.

- The rejection of claims 105, 107, and 108 under 35 U.S.C. § 102(b) as anticipated by Blonder is not sustained.

- The rejection of claims 66 and 81 under 35 U.S.C. § 103(a) as unpatentable over Blonder is sustained.

- The rejection of claims 67-71, 73, 82-86, 88, 96-101, and 103 under 35 U.S.C. § 103(a) as unpatentable over Blonder and Joao is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

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2   <u>AFFIRMED-IN-PART</u>

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